



ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

7 JAN 1983

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT SECRETARY

OF DEFENSE (HEALTH AFFAIRS)

UNITED STATES DEPARTMENT OF DEFENSE

Appeal of	)	
	)	OASD(HA) Case File 80-09-4
Sponsor:	)	
	)	FINAL DECISION
SSN:	)	
	)	

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs), in the CHAMPUS Appeal OASD(HA) Case File 80-09-4 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, chapter X. The appealing party in this case is the participating provider, \_\_\_\_\_, M.A., Marriage and Family Counselor. The Hearing File of Record, the tape of oral testimony presented at the hearing, the Hearing Officer's Recommended Decision, and the Memorandum of Concurrence from the Director, OCHAMPUS have been reviewed. The amount in dispute in this appeal is approximately \$1,190.

It is the Hearing Officer's Recommended Decision that the claims of the beneficiary for psychological counseling services provided July 1 through 29, 1976 and October 2 through December 29, 1976 be denied. The basis for this recommendation is there is insufficient documentation the services were rendered as part of good medical practice. The Director, OCHAMPUS concurs in this Recommended Decision.

The Acting Assistant Secretary of Defense (Health Affairs) after due consideration of the appeal record, concurs in the Hearing Officer's Recommended Decision to deny CHAMPUS payment and hereby adopts the recommendation of the Hearing Officer as the FINAL DECISION. The Recommended Decision of the Hearing Officer, however, incorrectly states the amount in dispute in this appeal. The correct amount in dispute for all claims for the period in issue is stated above.

The FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) therefore is to deny CHAMPUS claims for the services of the marriage and family counselor from July 1 through 29 and October 2 through December 29, 1976 as not medically necessary services in the treatment of a documented nervous, mental or emotional disorder under the applicable

joint service regulation, hereinafter referred to as Army Regulation 40-121, which implemented the CHAMPUS. This FINAL DECISION is based on the appeal record as stated above.

#### FACTUAL BACKGROUND

The appeal is one of six appeals by the participating provider which were consolidated for purposes of hearing. The beneficiary in this appeal, a dependent daughter of a United States Army member, was twelve years of age in 1976 when the services were performed.

The record in this appeal reflects the beneficiary was seen by \_\_\_\_\_, M.D. in February 1975 on the basis of behavioral problems. Dr. \_\_\_\_\_ tentative diagnosis was "adjustment reaction of childhood." Dr. \_\_\_\_\_ did not make a complete diagnosis and saw the beneficiary only briefly. No documentation appears in the appeal record to support the diagnosis such as a psychiatric evaluation or testing results. Dr. \_\_\_\_\_ referred the beneficiary, along with her mother and siblings, to Mr. \_\_\_\_\_ for family counseling, although Dr. \_\_\_\_\_ stated that he recognized some individual counseling would probably be appropriate.

The appeal file does not reflect therapeutic services were initiated during 1975 at the time of the referral. The appeal file does document individual therapy sessions were conducted from July 1 through 29, 1976 and October 2 through December 29, 1976, the periods in issue in this appeal. During these periods, thirty-four sessions were conducted (two per week) for which Mr. \_\_\_\_\_ submitted four CHAMPUS claims at \$35 per session for a total billed charge of \$1,190. The diagnosis stated on the claim form was adjustment reaction of childhood. No therapy notes, treatment plan, testing results or other documentation were submitted by Mr. \_\_\_\_\_ in support of his claims or appeal although requested by OCHAMPUS several times. No progress reports were submitted to the referring physician who stated he did not stay in contact with Mr. \_\_\_\_\_ and had no contact with the beneficiary subsequent to February 1975.

The CHAMPUS Fiscal Intermediary for California, Blue Shield of California, allowed one session per week, issuing payment for a total of \$492 after deduction of the beneficiary cost-share. The explanation of benefits form indicates the second session per week was not approved for payment by the Medical Reviewer. Informal Review and Reconsideration determinations by Blue Shield of California affirmed the initial determination on the basis the allowance of one session per week was within the usual and customary guidelines for this type of care. An appeal to OCHAMPUS was denied based on the absence of documentation in support of the claims. A hearing was requested by Mr. \_\_\_\_\_ and was held on June 5, 1980 at Fort

Ord, California before \_\_\_\_\_, Hearing Officer. The Hearing Officer has issued his Recommended Decision. All levels of administrative appeal have been completed and issuance of a FINAL DECISION is proper.

#### ISSUES AND FINDINGS OF FACT

The primary issue in this appeal is whether the services provided by Mr. \_\_\_\_\_ from July 1 through 29, 1976 and October 2 through December 29, 1976 constitute necessary services in the treatment of a nervous, mental and emotional disorder under the regulation in effect at the time of care - Army Regulation 40-121. The current Department of Defense Regulation governing CHAMPUS, DoD Regulation 6010.8-R, was implemented beginning June 1, 1977. Army Regulation 40-121 governs CHAMPUS cost-sharing of medical care prior to June 1, 1977 and is applicable to the period in issue in this appeal.

The CHAMPUS law authorizes in Sections 1077(a)(5), Title 10, United States Code, the treatment of nervous, mental or chronic conditions. As implemented by Army Regulation 40-121, authorized medical benefits for dependents of military members include treatment of nervous, mental and emotional disorders (AR 40-121, Paragraph 5-2 b(2)) by necessary services and supplies ordered by a physician (AR 40-121, Paragraph 5-2w). Necessary services and supplies are defined in Army Regulation 40-121 as:

"Those services, consumable supplies, and supportive devices ordered by the provider of care as essential for the care of the patient or treatment of the patient's medical or surgical condition." AR 40-121, Paragraph 1-6c.

Services of professional personnel, other than a physician, are authorized for treatment of nervous, mental and emotional disorders when ordered by a physician as essential for the proper care and treatment of the patient. (AR 40-121, Paragraph 5-2m.) Although the provider in this appeal, a marriage and family counselor, would qualify as an authorized provider under this provision, services cost-shared by CHAMPUS must be supported by medical records documenting the services as necessary or essential for the proper care and treatment of the patient's condition.

As stated above, the beneficiary received individual therapy from the appealing party at two sessions per week for four months. During this period of treatment the initial tentative diagnosis by Dr. \_\_\_\_\_, made without the benefit of

psychiatric testing, was not confirmed by testing or other evaluation and apparently no therapy notes, treatment plan, or progress reports were made.

Peer review by psychologists associated with Blue Shield of California recommended denial of one session per week based on the usual and customary practice to use conjoint therapy when working with more than one member of a family. Mr. [redacted] has contested the disallowance of one session per week as arbitrary and without procedural justification. Peer review by a marriage and family counselor with a doctoral degree, acting as a consultant to OCHAMPUS, opined that to perform an evaluation additional information was required; e.g., parental history, marital history, description of the family interaction system, developmental history of the beneficiary, treatment plan for the family and individual members, and progress notes. The clinical documentation provided by Mr. [redacted] was opined by the consultant to be grossly inadequate, i.e., neither complete nor comprehensive.

OCHAMPUS attempted to assist Mr. [redacted] in obtaining additional information to support his claims. In September, 1979, OCHAMPUS contacted the Fort Ord, California Human Services Coordinating Office, which Mr. [redacted] stated referred patients to him, to obtain medical records for the beneficiary. No medical records were available from this source. In January, 1980, OCHAMPUS contacted the referring physician, Dr. [redacted], as information regarding the referral was not furnished by Mr. [redacted]. The information submitted (some five years after the referral) revealed no contact by Mr. [redacted] with the referring physician and no documentation of the "tentative diagnosis" made by Dr. [redacted]. As noted above, Dr. [redacted] saw the beneficiary only briefly and did not make a complete diagnosis. As noted by the peer review, the basic information from which to evaluate the presence of a nervous, mental or emotional disorder and the necessity for the extended counseling is not present in this appeal.

Testimony by Mr. [redacted] at the hearing added no useful information on which I can consider authorizing CHAMPUS cost-sharing. Essentially, CHAMPUS is requested by Mr. [redacted] to cost-share approximately \$1,190 in services for which he has no confirmed diagnosis, no referral for such extended individual sessions, and no documentation as to the actual treatment provided.

The above stated regulatory authorities authorize CHAMPUS cost-sharing for services essential for the care of the patient or treatment of the patient's medical condition. As neither a medical condition requiring treatment nor the necessity of the

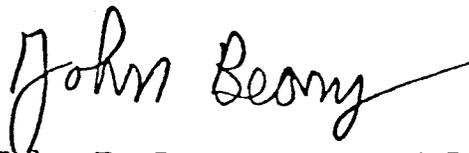
services are documented in this appeal, I must decline CHAMPUS cost-sharing for the entire period of care.

The Hearing Officer found the record contained insufficient documentation that the services were part of good medical practice. I agree with the Hearing Officer on this issue; I fail to find any documentation in the file supporting cost-sharing of any of the services. Therefore, I find CHAMPUS cost-sharing for the services provided by \_\_\_\_\_ to the beneficiary during July 1 through 29, 1976 and October 2 through December 29, 1976 must be denied on the basis stated above. As \$492 in CHAMPUS payments were previously issued to Mr. \_\_\_\_\_ for services within the period in dispute, I direct OCHAMPUS to initiate recoupment action to recover these payments which were made erroneously.

#### SUMMARY

In summary, it is the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) that the services provided by the appealing marriage and family counselor from July 1 through 29 and October 2 through December 29, 1976 were not necessary services under AR 40-121 and not covered by CHAMPUS.

The claims and the appeal of \_\_\_\_\_ are therefore denied. Issuance of this FINAL DECISION completes the administrative appeals process under DoD 6010.8-R, chapter X, and no further administrative appeal is available.



John F. Beary, III, M.D.  
Acting Assistant Secretary